IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.1609 OF 2006

Centurion Bank of Punjab Ltd
(Earlier Known as Centurion Bank Ltd.) .. Petitioner
V/s
The Income Tax Settlement Commission
& Ors. .. Respondents

Mr.S.E.Dastur with Mr.Rajesh Shah i/by M/s.Rajesh Shah & Co. for the Petitioner.

Mr.Ashok Kotangale for the Respondents.

CORAM : DR.S.RADHAKRISHNAN &
J.P.DEVADHAR, JJ.

DATE : 14th February, 2007.

JUDGMENT : (PER DR.S.RADHAKRISHNAN,J.)

1. Heard. Rule. Rule is made returnable forthwith. By consent of parties, petition is taken up for final hearing. The Petitioner is a Company engaged in the business of banking and related financial activities including leasing. The Petitioner was earlier known as Centurion Bank Limited. The Petitioner is also the successor-in-interest of two companies named 20th Century Capital Corporation Limited and 20th Century Finance Corporation Limited who have merged with the Petitioner. As of date the Petitioner which was formerly known as Centurion Bank Limited is today known as Centurion Bank of Punjab Limited.

2. By this petition, the Petitioner is challenging the order dated 27.12.2005 passed by the Income Tax Settlement Commission under Section 245D(1) of the

Income Tax Act, 1961 (hereinafter referred as "the said Act") whereby the Settlement Commission has taken a view that the settlement applications filed by the Petitioner in respect of its own assessments and the assessments of the two merging companies are not fit for admission on the ground that the case does not involve complexity and that there was no full and true disclosure by the Petitioner.

3. We have perused the impugned order dated 27th December, 2005 passed by the Settlement Commission. The learned Senior Counsel appearing for the Petitioner brought to our notice the provisions of Section 245D(1) of the Act, which reads as under:-

> **"245D(1).** On receipt of an application under Section 245C, the Settlement Commission shall call for a report from the Commissionr and on the basis of the materials contained in such report and having regard to the nature and circumstances of the case or the complexity of the investigation involved therein, the Settlement Commission, shall, where it is possible, by order, reject the application or allow the application to be proceeded with within a period of one year from the end of the month in which such application was made under Section 245C:
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> **Provided** that an application shall not be rejected

under this sub-section unless an opportunity has been given to the applicant of being heard:

Provided further that the Commissioner shall furnish the report within a period of forty-five days of the receipt of communication from the Settlement Commission in case of all applications made under section 245C on or after the 1st day of July, 1995 and if the Commissioner fails to furnish the report within the said period, the Settlement Commission may make the order without such report."

4. Mr.Dastur, the learned Senior Counsel has pointed out that the Settlement Commission can entertain the application on the basis of the material contained in the report of the Commissioner, and having regard to the nature and circumstances of the case or the complexity of investigation involved therein. Therefore, it is the submission of Mr.Dastur, the learned Senior Counsel for the Petitioner that the Settlement Commission in a given case, even if there were no complexity of investigation, still on the basis of the material contained in the report of the Commissioner, or having regard to the nature and circumstances of the case, the Commission has jurisdiction to entertain the application. In any event, the learned Senior Counsel Mr.Dastur has submitted that, in the instant case, it is the clear case of complexity of investigation. To substantiate the same, Mr.Dastur, the learned Senior Counsel has

pointed out that the above matter involves complexity of investigation because of the following : -

(i) It involves approximately 1900 lease transactions; (ii) which are spread over 15 assessment years; (iii) it requires examination and cross examination of multiple parties who are spread out across the length and breadth of the country; (iv) it involves nearly Rs.420 crores in disputed additions and disallowances; (v) it involves two assessees who no longer exist; (vi) where documents are admittedly lost owing to fire; and (vii) it involves prolonged litigation in the normal course.

5. Over and above it was also pointed out by the learned Senior Counsel that the Settlement Commission had called for the report from the Commissioner of Income Tax under Section 245D(1) of the said Act and he referred to the said report dated 10th October, 2005 wherein the Commissioner of Income Tax has quoted the observations of the Income Tax Appellate Tribunal in its composite order comprising the assessee, M/s.Centurion Bank Limited, M/s.20th Century Finance Corporation Limited and M/s.20th Century Capital Corporation Limited, which reads as unnder:-

"We have carefully considered the rival submissions and have gone through the record. **Having regard to**

the complexities of the issue, we are of the considered opinion that the assessee should be given one opportunity before the revenue authorities to plead against the disallowance of interest as well as the disallowance of depreciation. We, therefore, for the purpose set aside these issues in all those appeals, including the departmental appeals, to the file of the Assessing Officer with the direction to re-frame the assessments in accordance with law after giving the assessee a fair and reasonable opportunity of being heard in the matter." (Emphasis supplied).

It is also stated in the Commissioner's report that the Assessee had highlighted the complexities regarding cross-examination of various evidences, statements of the suppliers/lessees and the incident of fire which broke into their office on 29.10.2001 resulting into destruction of records. The Commissioner has stated therein that considering the plethora of issues involved, difficulties in verification of records which are stated to have been destroyed in fire and multiplicity of assessment years, it appears that there are apparent complexities of investigation involved in these cases.

6. Therefore it is the submission of the learned Counsel for the Petitioner that the report under Section 245D(1) has been given mentioning therein that the above cases involve complexities of investigation.

7. Mr.Dastur thereafter referred to the affidavits in reply filed on behalf of the Respondents dated 31st August, 2006 and 17th January, 2007 wherein the Assistant Commissioner of Income Tax has reiterated that the above case involves apparent complexities of investigation. To put it in other words, the learned Senior Counsel for the Petitioner has pointed out that even the Respondents (Revenue) agree that in the above case the complexities of investigation are involved, and if that be so, the Settlement Commission ought not to have dismissed the application of the Petitioner.

8. Mr.Dastur, the learned Senior Counsel has pointed out that the very same Settlement Commission with regard to two other cases involving similar issues, has already admitted their respective applications viz.in the case of Birla Capital & Financial Services Limited, and the Bank of Punjab Limited. Thereafter Mr.Dastur, the learned Senior Counsel for the Petitioner has pointed out that the very same bank viz.the Bank of Punjab, has now been merged with the Petitioner and now known as Centurion Bank of Punjab Limited, the Petitioner herein. Therefore Mr.Dastur has contended that it is thus very clear, as is borne out by the records and also by the stand of the Revenue, that this case involves complexities of investigation, and as such, the Settlement Commission ought not to have dismissed the application of the

Petitioner.

9. As far as the second issue whether there was lack of "full and true disclosure", the learned Senior Counsel Mr.Dastur has pointed out that the petitioners have disclosed relevant facts in detail and based on the same the assessment has been completed and there is no failure whatsoever on the part of the petitioner in not making "full and true disclosure" in the above. Mr.Dastur, the learned Senior Counsel has brought to our notice that the Tribunal has merely observed that there is no "full and true disclosure" by the Petitioner, and without setting out any particulars, such observation has been made by the Settlement Commission. In that behalf, Mr.Dastur, the learned Senior Counsel has referred to the judgment of the Supreme Court in the case of **Calcutta Discount Company Limited V/s.Income Tax Officer - 1961 ITR 191**, wherein it has been observed by the Supreme Court as under:-

> "Does the duty, however, extend beyond the full and truthful disclosure of all primary facts? In our opinion, the answer to this question must be in the negative. Once all the primary facts are before the assessing authority, he requires no further assistance by way of disclosure. It is for him to decide what inferences of facts can be reasonably drawn and what legal inferences have ultimately to be drawn. It is not for somebody else - far less the assessee- to tell the assessing authority what inferences, whether of facts or law, should be drawn. Indeed, when it is remembered that people often differ as regards what inferences should be drawn from given facts, it will be meaningless to demand that the assessee must disclose what inferenes- whether of facts or law - he would draw from the primary facts."

10. Mr.Dastur has contended that in the instant case there is absolutely no failure on the part of the Petitioner with regard to "full and true disclosure" and the Settlement Commission has erroneously observed that there is no "full and true disclosure". . In the aforesaid facts and circumstances of the case, the learned Senior Counsel for the Petitioner has submitted that the Settlement Commission ought to be directed to proceed with the above application of the Petitioner at the stage of 245D(4) of the Act.

11. Mr.Kotangale, the learned Counsel appearing on behalf of the Respondents (Revenue) also could not dispute the submissions of the learned Senior Counel Mr.Dastur for the Petitioner, and in fact, the learned Counsel for the Respondents conceded that the Respondents (Revenue) itself through the Commissioner of Income Tax had recommended the admission of the petition before the Settlement Commission as there were apparent complexities involved in the case. The learned Counsel for the Revenue has pointed out that in both the affidavits filed by the Respondents before this Court, the Respondents have admitted that there were apparent complexities of investigation involved in the case.

12. The impugned order of the Settlement Commission proceeds on the basis that the Commission can entertain the application only if the complexities of investigation

are involved, whereas the bare reading of section 245D(1) clearly indicates that there are three circumstances under which the Commission can entertain such applications, viz. 1) on the basis of the materials contained in the Commissioner's report, 2) having regard to the nature and circumstances of the case or 3) the complexity of the investigation involved therein.

13. In any event, we are clearly of the view that the Commissioner of Income Tax by its report, when called for by the Settlement Commission under Section 245D(1), has categorically held that the complexities of investigation are involved. Over and above, as pointed out by the learned Senior Counsel for the Petitioner that the assessment is spread over 15 assessment years; involving approximately 1900 lease transactions; that the case requires examination and cross examination of multiple parties who are spread out across the length and breadth of the country; that the case involves nearly Rs.420 crores in disputed additions and disallowances and that the documents are admittedly lost owing to fire etc. It would clearly indicate that the complexities of investigation are involved in the case. Hence, the Settlement Commission had committed an error thereby coming to the conclusion that there are no complexities of investigation.

14. As far as "full and true disclosure" is concerned, as

pointed out by the Supreme Court in the aforesaid judgment of **Calcutta Discount Company Limited V/s.Income Tax Officer (supra)** merely remarking that there was no full and true disclosure by the Petitioner would not be sufficient. It has to be justified on what basis and what particulars have not been disclosed etc. In the instant case, the Settlement Commission has merely observed that the Petitioner has not made full and true disclosure. Even otherwise, if that be so, the Assessing Officer would not have been able to complete the assessment.

15. Under the aforesaid facts and circumstances, Rule is made absolute in terms of prayer clause (a) and (b-ii). Respondent No.3 is refrained from giving effect to and/or proceeding further by way of assessment/reassessment, recovery of demand or otherwise in any manner in respect of assessment years which are the subject matter of the said settlement applications filed by the Petitioner in respect of its own assessments and the assessments of erstwhile 20th Century Finance Corporation Limited and 20th Century Capital Corporation Limited.

16. Needless to say that all the applications moved by the Petitioner before the Settlement Commission are restored to the file of the Settlement Commission with the direction to proceed further beyond the stage of Section 245D(1) of the said Act and to treat them as having been admitted for settlement and to deal with them in

accordance with law and also pass an appropriate order on merits in those applications as per the provisions of section 245D(4) of the said Act.

17. Rule is made absolute in terms of the above, however with no order as to costs.

(J.P.DEVADHAR, J.) **(DR.S.RADHAKRISHNAN,J.)**